

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT JOHN CRUZ,

No. C06-6405 MJJ

Petitioner,

**ORDER GRANTING PETITIONER'S
APPLICATION FOR CERTIFICATE OF
APPEALABILITY**

v.

ROSEANNE CAMPBELL, Warden,

Respondent.

Before the Court is Petitioner Robert John Cruz's Application for a Certificate of Appealability ("COA") pursuant to 28 U.S.C. § 2253.

Pursuant to 28 U.S.C. § 2253, a Petitioner is required to obtain a COA from the district court prior to filing an appeal. A court may issue a COA when "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The "substantial showing" may be satisfied where the petitioner demonstrates "that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 483-84 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893-94 (1983)).


In the instant case, Petitioner contends that a COA should issue as to each of the two issues presented in the habeas petition: (1) whether Petitioner was deprived of his due process rights when

1 the state court trial judge failed to consider Petitioner's background, character, and prospects when
2 considering Petitioner's request for *Romero* relief; and (2) whether the prison term of 25 years to life,
3 imposed under California's Three Strikes Law, violated the Eighth Amendment proscription against
4 cruel and unusual punishment, as applied to Petitioner. Upon review, the Court finds that Petitioner
5 has met the requirements for obtaining a COA and **GRANTS** Petitioner's request as to both issues.
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7 The Clerk shall forward this order along with the case file to the United States Court of
8 Appeals for the Ninth Circuit. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).
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11 **IT IS SO ORDERED.**

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13 Dated: April 3, 2008

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15 MARTIN J. JENKINS
16 UNITED STATES DISTRICT JUDGE
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